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Rationalizing Hybrid Financial Instruments from an *Usūlī* Perspective

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Abstract

This paper identifies a prime reason for the underdevelopment of the Muslim world to the lack of advancement of their financial intermediation system. We instigate the employment of hybrid financial instruments to reinvigorate their financial architecture. Not only does this solution satisfy the economic efficiency prerequisites, it is also in congruent with *usūl al-fiqh* (principles of Islamic jurisprudence).

Keywords: juristic interpretation (*Ijtihād*), participating preferred *ijārah* (lease), principles of Islamic jurisprudence (*Usūl al-fiqh*).

1. Introduction

Goldsmith in his well known 1969 text states that “*one of the most important problems in the field of finance, if not the single most important one,is the effect that financial structure and development have on economic growth*” (p. 390).¹ Centuries of economic underdevelopment of the Muslim world, as illustrated in Kuran (1997, 2003 and 2004), is deeply intertwined with the manner in which Islamic financial intermediation has evolved over the years.^{2, 3, 4} Whilst the causal factors are

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- 1 Goldsmith, R. W., *Financial structure and development* (New Haven, CT, USA: Yale University Press, 1969).
 - 2 Kuran, Timur, 'Islam and Underdevelopment: An Old Puzzle Revisited', *Journal of Institutional and Theoretical Economics*, 153 (1997): 41-71.
 - 3 Kuran, Timur, 'The Islamic Commercial Crisis: Institutional Roots of Economic Underdevelopment in the Middle East', *Journal of Economic History* 63(2003): 414-446.

complex, the following factors have likely contributed to the issues undergirding the ‘divergence’ in the economic development of some Muslim countries. First, juristic interpretation (*Ijtihād*) in the area of commercial transactions has failed to advance Islamic Law beyond the customary practices (*‘urf*) which were incorporated in the early era of the Prophet (PBUH) and the two generations after him, i.e. that of the pious predecessors (*al-Salaf al-sāli’hīn*). Interlinked to this is the controversial issue of the ‘closure of the gates of *Ijtihād*’ (see Hallaq, 1984, for a survey of this debate).⁵ The fact that *Sharī‘ah* (Islamic Law) scholars insist on emulating the classic financial instruments derived by employing subterfuges (*‘hīlah* or ‘*sharī‘ah* –arbitrage’) reinforces the view that Islamic financial contracting is still embedded in a medieval worldview (see El-Gamal, 2006; and Khan, 2010).^{6, 7}

Second, twenty-first century financial intermediation, though not perfect, has evolved beyond pre-modern forms, encompassing financial economics along with various management sciences. Its technical intricacies, no doubt, lay beyond the mandate and training of most *Sharī‘ah* scholars, which is not a criticism of this group per se, since specialised knowledge of worldly/temporal matters was never intended to be the primary function of these ‘inheritors of the Prophets’. Imām Muslim reinforces this view with the following *‘hadīth* (tradition of the Prophet Muhammad) based on the Chapter ‘*It is obligatory to follow the Prophet in all matters pertaining*

4 Kuran, Timur, 'Why the Middle East Is Economically Underdeveloped: Historical Mechanisms of Institutional Stagnation', *Journal of Economic Perspectives* 18(2004): 71-90.

5 Hallaq, W., 'Was the Gate of Ijtihad Closed?' *International Journal of Middle Eastern Studies* 16(1)(1984): 3-41.

6 El-Gamal, Mahmoud, A., *Islamic Finance: Law, Economics and Practice* (Cambridge: Cambridge University Press, 2006).

7 Khan, Feisel, 'How ‘Islamic’ is Islamic Banking?' *Journal of Economic Behavior and Organization* 76 (2010): 805-820.

to Religion, but one is free to act on one's own opinion in matters pertaining to technical skill.':

*Rafi' b. Khadij reported that the Prophet saw the people grafting the trees when he migrated to Medina. He inquired: What are you doing? They replied: We are grafting them, whereupon he expressed his disapproval by saying: It may be good for you if you do not do that, so they abandoned this practice, (and the date-palms) began to yield less fruit. They made a mention of it (to the Prophet), whereupon he said: I am a human being, so when I command you about a thing pertaining to religion, do accept it, and when I command you about a thing out of my personal opinion, keep in mind that I am a human being. 'Ikrima reported that he said something like this." (see Siddiqui, 1986; *hadīth* # 5831).⁸*

To bridge this divide, Al Alwānī (1997) recommends joint *ijtihād* between *Sharī'ah* scholars, financial economists and practitioners.⁹ Given the economic under-development of the Muslim world, this article recommends a radical approach towards enhancing efficiency of financial intermediation, contrary to the current form of Islamic banking transactions that are deeply reliant on: (i) cost-plus-mark-up structures (*Murāba'ha*); and (ii) its variant in the form of *Tawarruq* (structured as a *muraba'ha* with an immediate sale of the underlying real asset), yielding a pure *ribawī* debt vehicle.¹⁰

8 Siddiqui, Abdul Hamid, *Sahih Muslim-Translation* (New Delhi, India: Kitab Bhavan, 1986), IV:1259-60 (*hadīth* # 5831).

9 Al 'Alwānī, Tāha Jabir, 'The Role of Islamic Ijtihad in the Regulation and Correction of Capital Markets', *American Journal of Islamic Social Sciences* 14(3)(1997): 39-66.

10 See below for more clarification of the Arabic term *ribawī*.

This improvement in efficiency is achieved through the employment of a family of hybrid financial securities (or structured financial facilities) detailed below, which are generically termed the Participating Preferred *Ijārah* (PPI) Facility. The facility is demonstrated by Ebrahim and Hussain (2010) as being economically efficient (*Pareto-optimal*) over both pure debt and pure equity structures.¹¹ It is also advocated as a primary funding vehicle, as well as a work-out one in the current financial crisis (see Ebrahim et al. 2011).¹² We elaborate the structure of this facility in Section II, and rationalize its employment from the *Sharī'ah* perspective in Section III. Section IV provides the concluding remarks.

2. Elaboration on the Array of Hybrid (Structured) Financial Facilities

Hybrid securities range between the two extreme forms of financial intermediation, i.e. *ribawī* debt and residual equity. Debt in the jargon of finance is employed to boost earnings of the entrepreneur (or equity owner), without absolving control rights over the venture, as it is generally non-voting. However, the Qur'ān, in contrast to the well-known Nobel Prize winning Modigliani and Miller Theorem (1958), reprimands employment of this form of usurious (*ribawī*) financing. Salleh et al. (2013) in their study on the economic rationale behind the Qur'ānic injunction of *ribā an-nasī'ah* attributes it to the: (i) potential expropriation of assets of either borrower or lender (see Q. 2:275, 2:278-279, 2:281, 3:130-132, 4:161, 30:39); (ii) transfer of fragility to the financial system (see Q. 2:280); and (iii) financial exclusion

11 Ebrahim, M. Shahid, and Hussain, Sikandar, 'Financial Development and Asset Valuation: The Special Case of Real Estate', *Journal of Banking and Finance* 34 (2010): 150-162.

12 Ebrahim, M. Shahid, Shackleton, Mark B., and Wojakowski, Rafal M., 'Participating mortgages and the efficiency of financial intermediation', *Journal of Banking and Finance* 35 (2011): 3042-3054.

of the poor (see Q. 2:276-277, 30:39).¹³ The recent subprime crisis, emanating from mortgages to borrowers without proper assessment on their capacity to service the facility, thereby violating all the above Qur'ānic injunctions, disseminated into a sovereign debt crisis. This basically vindicates the Islamic perspective over contemporary views of economists who endorse *ribawī* financing. Congruent with the Qur'ānic injunctions, Salleh et al. (2013) recommend the employment of hybrid securities for the circumvention of issues (i) and (ii), while charitable funds (emanating from *sadaqah*, *zakāt* etc.) can be deployed to avoid issues (i) and (iii).¹⁴

The PPI (hybrid securities) discussed in Salleh et al. (2013) is created by merging a special *Ijārah* (leasing) facility with a *Mudārabah* (equity contract with restricted voting rights) structure that is secured by real assets of a firm (or underlying project).¹⁵ The hybrid security provides an option-like facility that integrates downside 'risk-sharing' with the upside 'profit-sharing' (see also Kamali, 1997; and the Figure below).¹⁶ It also confers a 'preferred' status to the financier who then ranks higher than the equity-owner. The PPI is inspired by Participating Mortgages (PM), which are instrumental in reconciling the conflict of interest (agency cost of debt) between financiers and real estate developers, especially in case of construction loans (see Ebrahim et al., 2011).¹⁷ This accrues to the long gestational period in real estate development to reach a state where the payoffs are sufficient to service the

13 Salleh, Murizah, O., Jaafar, Aziz, Ebrahim, M. Shahid, and Molyneux, Philip, 'Has the Prohibition of Interest Hindered Development of the Muslim World?' Working Paper, Bangor Business School, North Wales, U.K. (2013).

14 Ibid.

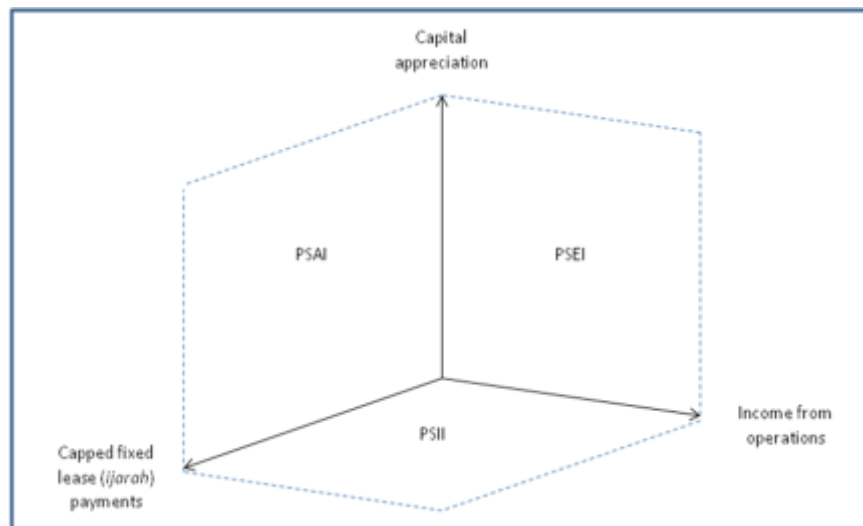
15 Ibid.

16 Kamali, Mohammad Hashim, , Islamic Commercial Law: An Analysis of Options, *American Journal of Islamic Social Sciences* 14(3) (1997): 14-37.

17 *Supra* note 12 at p. 4.

fixed interest obligations ensuing from a traditional *ribawī* mortgage. Thus, investors are in a state of predicament, as low levels of cash flow in the construction phase expose them to default risk, while financiers are debarred from benefiting from the success of the real estate venture (in a *ribawī* mortgage). A PM offers a compromise where the financier is compensated with a share in the future payoffs (in the operating and/ or terminal state) in lieu of a reduction in payment during the construction phases. The proposed PPI facility extends the PM by incorporating downside risk sharing with a capped *Ijārah* portion.

Figure: Preferred Participating *Ijārah* Facility



The above figure illustrates the various forms of a PPI facility. This involves various combinations of participatory components such as: (i) Preferred Shared Appreciation *Ijārah* (PSAI), where the financier subsidizes the pure *Ijārah* obligations in return for a share in the appreciation of the firm (or project); (ii) Preferred Equity *Ijārah* (PSEI), where the financier is the co-owner sharing different amounts of income and appreciation (in contrast to a pure equity form proposed by Siddiqi (1983) and Chapra (2006); and (iii) Preferred Shared Income *Ijārah* (PSII),

where the financier subsidizes the *Ijārah* obligations in return for a share in the income from operation.^{18, 19}

A PPI security is generally preferable to a convertible one for the following reasons: (i) it alleviates the fragility of the financial system by "*giving respite to borrowers*" (Qur'ān 2:280); (ii) it is malleable in three dimensions yielding the variants such as PSAI, PSEI and PSII, as illustrated in the above Figure; and (iii) it allows an investor to retain control of the firm even in the good state of the economy, unlike convertible debt, where the conversion to equity dilutes these control rights. A PPI (in general) reduces the agency costs of debt better than plain vanilla (*ribawī*) debt or that of a banking-*murāba'hah* or a *tawwaruq* facility (see Corollary, Ebrahim and Hussain, 2010).²⁰

3. Rationalizing the PPI Security from an Islamic Perspective

There are several hermeneutic approaches which could be employed to rationalise the employment of PPI in a Muslim financial intermediation system. The most widely accepted, which is adopted for the purposes of this paper, is the approach of classical *usūl*, referred to here as the *Usūlī*-rationalisation approach. It is closely aligned with classical Muslim jurisprudential theory – *Usūl al-fiqh* – and should satisfy the demands of parties involved in Islamic Finance who have a preference for arguments constructed on the basis of classical jurisprudential instruments. Historical approaches, such as the double-movement theory advocated by Fazlur Rahman

18 Siddiqi, M. Nejatullah, *Banking without interest* (Leicester, UK: The Islamic Foundation, 1983).

19 Chapra, M.U., 'Why has Islam prohibited interest? Rationale beyond the prohibition of interest'. In A. S. Thomas (Ed.), *Interest in Islamic economics: Understanding riba* (London, New York: Routledge, 2006).

20 *Supra* note 11 at p. 4.

(1982), could also be employed to justify PPI; approaches such as these aim via historical criticism to extract the principles that underpin Qur'ānic ethico-legal injunctions and then apply these to realities which the Muslim community faces in modern times.²¹ Whilst such approaches can afford a more coherent and robust justification for financial instrument like PPI, they are at the same time more intricate which renders them inappropriate for a paper of this scope.

Usūlī-rationalisation of PPI:

For this, we resort to the following principles of classical Islamic legal theory:

One – The *Sharī'ah* aims at securing benefits (*jalb al-masāli'h*) and preventing harm (*daf' al-dharar*):

According to the majority of jurists and theologians, the *Sharī'ah* is inherently rational in both its prescriptions and proscriptions. Often the Qur'ān provides the rationale for its positive and negative rulings, such that the proscriptions of drinking wine (*khamr*) and gambling (*maysir*) are aimed at warding off hostility and division:

By means of intoxicants and games of chance, Satan seeks only to sow enmity and hatred among you, and to turn you away from the remembrance of God and from prayer. Will you not, then, desist?

(Q.5:91)

With consideration for the rational underpinnings of the Qur'ān's legal injunctions, jurists have inducted that the *raison d'être* of Islamic Law is to acquire benefits for Muslims and to protect them from harm (*jalb al-masāli'h wa dar' al-mafāsīd*). This applies to both areas of law, ritual worship (*ʿibādāt*) and worldly

21 Rahman, Fazlur, *Islam and Modernity: Transformation of an Intellectual Tradition* (Chicago, IL: University of Chicago Press, 1982).

transactions (*mu^ʿāmalāt*). In this context, the Spanish jurist Abū Ishāq al-Shātibī (d. 1388) says:

By induction (istiqrāʾ) I have come to be certain that the Sharīʿah exists for the benefit (masāliḥ) of worshippers. God, the Exalted, says concerning the principle behind the commissioning of Messengers, '[We sent all these] apostles as heralds of glad tidings and as warners, so that men might have no excuse before God after [the coming of] these apostles.' (Q. 4:125); *'And We have not sent you save as a mercy to the world.'* (Q. 21:107). *And He says about the purpose of creation, 'He it is Who created the heavens and the earth in six Days - and His Throne was over the waters - that He might try you, which of you is best in conduct.'* (Q. 11:7); *'And I did not create the Jinn and men save to worship Me.'* (Q. 51:56)...*As concerns the effective causes (ta^ʿlīl) underpinning the details of laws in the Book and the Sunnah, they are greater than can be enumerated, such as God saying after the verse of ablution, 'God does not intend for you hardship, rather He wants you to be cleansed and He wants to complete His favour upon you.'* (Q. 5: 6); *and about fasting, He says, 'Fasting is prescribed for you as it was for those from aforetime so that you may attain God-consciousness.'* (Q. 2: 183)...*Since induction indicates this; and it is, in such cases, the vehicle to achieve certainty; then we should be convinced that the matter is repeated in all details of law. Based on the citations above, there is furthermore a sound basis for*

analogical reasoning (qiyās) and legal reasoning (ijtihād)." (*al-Muwāfaqāt*, II: 322).²²

This being so, any case requiring a legal ruling should be evaluated on the basis of its associated benefits and harms. Where the benefits outweigh the harms, such a case may legitimately be regarded as permissible; in contradistinction, where the harms outweigh the benefits, a case may be judged as impermissible. Since harms and benefits are variables which are dependent upon the three factors of time, place and person, this process must be constantly subjected to review.

Thus, we rationalize the permissibility of PPI in accordance with the principle of securing benefits (*jalb al-masāli'h*) and preventing harm (*daf' al-darar*).

The principle of permissibility (*qā'idat al-ibā'hah*) may also be invoked to support PPI, but it should be made clear that it is most relevant when a new case has not had an opportunity to be subjected to juristic analysis. This principle has been extracted by the inductive method and is based on several verses of the Qur'ān:

We have subjugated to you all that is in the heavens and the earth
(Q.45:13).

He it is who created for you all that is on the earth (Q.2:29).

Allah has explained to you in detail what is forbidden to you unless you are compelled to it" (Q.6:119).

And Allah will not mislead a people after He has guided them, so that He makes clear to them what to fear (and what to avoid) (Q.9:115).

22 Al-Shātībī, Ab- Ishāq, *al-Muwāfaqāt fī usūl al- Sharī'ah* (4 vols.) (Beirut, Lebanon: Dār al-Ma'rifa, 2001).

It is important to note that the principle of *ibā'ḥah* should not be invoked for matters that fall within the domain of ritual worship (*ʿibādāt*), since it is generally outside the remit of human reason to formulate rules pertaining to ritual worship; in contrast, the maxim does have its rightful place in the domain of mundane worldly affairs (*ʿumūr dunyawīyyah*). Further, it is mainly concerned with commercial transactions, which are permissible as long as ‘nothing in them is forbidden’, as stated by Ibn Taymiyya (d. 1328). Indeed according to the Damascene jurist, “*God Most High never prohibited a contract in which there is benefit for Muslims and does not inflict harm upon them.*” (*Majmūʿ al-Fatāwā*, XVII: 65).²³

Two – Bringing Ease (*Taysīr*) and Removal of Hardship (*Rafʿ-al-ʿharaj*):

This principle is enshrined in the cardinal objectives (*maqāsid*) of the *Sharīʿah* as explained by al-Shātibī:

*Know that hardship ('haraj) is lifted away from the legally responsible agent (mukallaf) for two reasons: The first reason is from fear that he will stray from the right path, detest worship, and shun legal responsibility; stemming from this is fear that he will come to ruin either physically, mentally or financially; The second reason is from fear that he will be over-burdened with responsibilities. For example, he is responsible for his family and children as well as other things that confront him on his path; too many responsibilities may lead to attention on some to the detriment of others. Despite his desire to juggle each, the mukallaf could ultimately become disengaged. (al-Muwāfaqāt, II: 440).*²⁴

23 Ibn Taymiyya, *Taqī al-Dīn, Majmūʿ al-Fatāwā* (37 vols.) (Beirut, Lebanon: Dār al-kutub al-ʿilmiyya, 2000), XVII: 65.

24 *Supra* note 22 at p. 10.

Al-Shātībī and other jurists justify the principle of facilitation and removal of hardship on the basis of the Qur'ān and *Sunnah*.

"God does not burden a soul beyond its capacity" (Q.2:286).

"God wishes to lighten your difficulties, for man was created weak" (Q.4:28).

"God intends every facility for you, and He does not want to put you into difficulty" (Q.2:185).

"God desires not to inflict any hardship upon you" (Q.5:6)

"Bring ease, not hardship, and give good news, not gloom" (Muslim, hadīth no. 1112).

*"The best of your religion is that which is easy" (Ahmed ibn Hanbal, *Fihris Ahādīth Musnad al-Imām Ahmed b. Hanbal*, compiled by Abū Hajir Zaghlul, Beirut, *Dār al-Kutub*, 1405/1985, IV, 338).*

*"Whoever forbids leniency closes the door to goodness" (Muslim, *Mukhtasar Sahīh Muslim*, p. 474, hadīth no. 1783).*

We rationalize the employment of PPI, as it facilitates efficient financial intermediation system, in harmony with the above two *Sharī'ah* principles (and the two below). One can deem the facility as a '*Sharī'ah*-Pareto' efficient solution.

Three – The Freedom to Contract (*Hurriyyat al-ta'āqud*):

The Qur'ānic basis for this principle is the verse, *"O you who believe! Eat not up your property among yourselves in vanities: But let there be amongst you traffic and trade by mutual good-will."* (Q. 4:29). Ibn Qayyim al-Jawziyya (d. 1350), in explanation of this principle, notes that the parties to a contract are free to stipulate

and add conditions to it as they deem fit, as long as it does not violate the clear prohibitions of the *Shari'ah* (Ibn Qayyim al-Jawziyya, I: 344).²⁵ This is reinforced by his teacher and mentor Ibn Taymiyya (d. 1328), who states that the Qur'anic instruction to people to "*fulfil their contracts*" (Q. 5:1) is broad and comprehensive, comprising every contract the Lawgiver (i.e. God) has not specifically forbidden (*Majmū' al-fatāwā*, XVII: 65).²⁶ It should be borne in mind that the concept of *Shari'ah* for both student and teacher is a cognate for justice; Ibn Taymiyya says, "*God supports the just state (al-dawlah al-^cādilah) though it be non-Muslim and He does not support the unjust [state] though it be Muslim. For this reason, it is said, 'The earthly world (dunya) continues to turn with justice and disbelief but it cannot continue with injustice and Islam.'*" (see Holland, 1983).²⁷ The basic requirements are the mutual consent of all parties, which is defined in the verse above, as well as contract stipulations which are fair. See Kamali (2002) for other views on the issue.²⁸

Thus, from the above principle of freedom of contracting, the PPI facility should be permitted.

25 Al-Jawziyyah, Ibn Qayyim, *F'lām al-Muwaqqi'īn 'an Rabb al-^cĀlamīn* (Cairo, Egypt: Maktabah al-Kulliyat al-Azhariyyah, 1968): 1, 344.

26 *Supra* note 23 at p. 11.

27 Holland, M.. *Public Duties in Islam: The Institution of Hisba* by Ibn Taymiyya, Translation (Leicester, UK: Islamic Foundation, 1983): 95.

28 Kamali, Mohammad Hashim, 'The *Shari'ah* Perspective on Commercial Transactions', In: Kamali, M.H., *Islamic Commercial Law: An Analysis of Futures and Options* (Selangor, Malaysia: Ilmiah Publishers Sdn Bhd., 2002): 66-83.

Four – Mutual Cooperation (*al-ta^cāwun*) and Conflict Avoidance (*daf^c al-^cadāwah*):

The Qur’ānic basis for this principle is the verse, “...and assist one another in righteousness and piety, but do not assist one another in sin and hostility”. (Q. 5:2). Islamic Law in the area of *mu^cāmalāt* is predicated on the prevention of conflict, exploitation and injustice among people (Kamali 2002).²⁹ Furthermore, to promote economic cooperation among the Muslim fraternity, it incorporates provisions such as charity (*sadaqah*) and benevolent loans (*qard 'hasan*); these are extended to both the needy as well as to the entrepreneur.

In Section II of this article, we illustrated how interest-bearing debt contract runs afoul of at least three attributes of *ribā* described in the Qur’ān. Further, the conflict which Kamali (2002) discusses can be identified as that between a borrower and a lender.³⁰ This is termed as the agency cost of debt in the finance literature and explained as follows.

When firms are financed with *ribawī* debt (or so-called ‘Islamic’ debt facilities stemming from a banking-*murāba'hah* or a *tawwaruq* facility), manager-entrepreneur has an incentive to transfer the downside risk (of the venture) to the financiers, while benefiting from the upside potential. This is a well-known problem of risk-shifting or asset-substitution. A number of studies, such as Smith and Warner (1979) and Barclay and Smith (1995), have illustrated that risk management through the use of secured debt alleviates this issue.^{31, 32} Other studies, such as Haugen and Senbet (1981) and

²⁹ Ibid.

³⁰ Ibid.

³¹ Smith, Clifford W. Jr., and Warner, Jerold B., 'On Financial Contracting: An Analysis of Bond Covenants', *Journal of Financial Economics* 7(2) (1979): 117-161.

Green (1984), have argued that participating clauses and other forms of financial innovations also mitigate this issue by allowing the financier to share in any windfall that the manager-entrepreneur receives.^{33, 34}

A second type of agency problem associated with *ribawī* debt financing (or banking-*murāba'hah* or *tawwaruq* facility) is referred to as the under-investment problem (see Myers, 1977).³⁵ Here, manager-entrepreneurs are motivated to reject positive Net Present Value (NPV) investment proposals if the wealth enhancement associated with the venture accrues mostly to financiers. Bodie and Taggart (1978) and others have argued that financial innovations in the form of participation clauses can be employed to mitigate this issue.³⁶

Thus, employment of PPI can be used to mitigate the endogenous agency cost of debt more efficiently than an interest bearing debt facility or contemporary 'Islamic' ones of banking-*murāba'hah* or *tawwaruq*. This alleviates the inherent conflict of interest between manager-entrepreneurs and financiers.

32 Barclay, M.J. and Smith, C.W., 'The Priority Structure of Corporate Liabilities', *Journal of Finance* 50 (1995): 899-917.

33 Haugen, R., and Senbet L.W., 'Resolving the Agency Problems of External Capital through Stock Options', *Journal of Finance* 36 (1981): 629-647.

34 Green, R.C., 'Investment Incentives, Debt, and Warrants', *Journal of Financial Economics* 13 (1984): 115-136.

35 Myers, Stewart C., 'Determinants of corporate borrowing', *Journal of Financial Economics*, 5(2) (1977): 147-175.

36 Bodie, Z. and Taggart, R.A., Future Investment Opportunities and the Value of Call Provision on a Bond, *Journal of Finance* 33 (1978): 1187-1200.

4. Conclusion

This article recommends the employment of a Preferred Participating *Ijārah* (Structured Hybrid) facility to redeem centuries of economic malaise in the Muslim world. This facility is ‘*Sharī‘ah*-Pareto’ efficient and can be used as a primary financing vehicle as well as a work-out vehicle (after the default of a *ribawī* facility or that of an ‘Islamic’ banking-*murāba‘ah* or a *tawwaruq* facility or a pure *ijārah*). It can be assimilated into the Islamic financial architecture which resembles a Universal banking system, where the financial intermediary funds the entrepreneur-manager, in return for a preferred participation of profits (and/or terminal payoffs). Since the facility is consistent with the overarching aim of Islamic Law – namely, the securing of benefits for the Muslim community and averting from it harm – as well as the sub-principles of: (i) *taysīr* (bringing ease) and *raf‘ al-‘haraj* (removal of hardship); (ii) *‘hurriyyat al-ta‘āqud* (freedom to contract); (iii) mutual cooperation and conflict avoidance; and (iv) not being in contradiction with the key prohibitions set out in the Qur’ān, such as those linked with *ribā* and *maysir*; it is clearly an instrument which should be considered legally permissible (*mubā‘h*).